

\*E-FILED 07-01-2011\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JENNIFER PURCELL, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

SPOKEO, INC.,

Defendant.

No. C10-03978 HRL

**ORDER (1) DENYING DEFENDANT'S  
MOTION TO DISMISS; AND (2)  
GRANTING DEFENDANT'S  
ALTERNATE MOTION TO TRANSFER  
VENUE**

**[Re: Docket No. 14]**

BACKGROUND

In this putative class action, plaintiff Jennifer Purcell claims that defendant Spokeo, Inc. (Spokeo) publishes and markets false or inaccurate consumer information on its website, Spokeo.com. She asserts claims for violations of (1) the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681; (2) Unjust Enrichment; and (3) The Illinois Uniform Deceptive Trade Practices Act (IDTPA), 815 ILCS § 510./1. She also seeks declaratory relief.

All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned. 28 U.S.C. § 636(c); FED. R. CIV. P. 73.

Spokeo moves to dismiss for improper venue. Alternatively, defendant requests that this case be transferred to the District Court for the Central District of California. Plaintiff opposes the motion. The matter was deemed submitted without oral argument. Upon consideration of

1 the moving and responding papers,<sup>1</sup> this court denies defendant's motion to dismiss, and grants  
2 defendant's alternate motion to transfer venue.

3 DISCUSSION

4 A. Motion to Dismiss for Improper Venue

5 For purposes of determining proper venue, "a defendant that is a corporation shall be  
6 deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time  
7 the action is commenced." 28 U.S.C. § 1391(c). For purposes of determining whether venue is  
8 proper here, this court treats the Northern District of California as if it were a separate state and  
9 determines whether, at the time the action was filed, Spokeo had sufficient contacts to subject it  
10 to personal jurisdiction here. Id.

11 Spokeo acknowledges that, at one point in time, it was headquartered here.  
12 Nevertheless, there is no dispute that defendant moved its operations to Pasadena, California  
13 nearly one year *before* the instant action was filed. (Tang Decl. ¶¶ 3-6). Purcell contends that  
14 her claims concern the processes by which Spokeo developed its technology, some of which  
15 reportedly occurred here. This argument fails to convince. The crux of her complaint pertains  
16 not to Spokeo's technology development, but rather, *how* Spokeo allegedly uses that  
17 technology. Accordingly, this court finds that venue does not properly lie in this district.

18 Even so, this court declines to dismiss this case on that basis. And, for the reasons  
19 stated below, the court will instead transfer this action to the Central District of California.

20 B. Motion to Transfer Venue

21 "For the convenience of parties and witnesses, in the interest of justice, a district court  
22 may transfer any civil action to any other district or division where it might have been brought."  
23 28 U.S.C. § 1404(a). A district court has discretion to decide motions to transfer venue based  
24 upon a case-by-case consideration of convenience and fairness. Jones v. GNC Franchising,  
25 Inc., 211 F.3d 495, 498 (9th Cir. 2000) (quoting Stewart Org. v. Ricoh Corp., 487 U.S. 22, 29  
26 (1988)).

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<sup>1</sup> Defendant's request for judicial notice is granted. FED. R. EVID. 201.

1 Here, there is no dispute that the instant action properly could have been brought in the  
2 Central District of California. As discussed above, Spokeo has its headquarters and principal  
3 place of business there. (Tang Decl. ¶ 3); 28 U.S.C. § 1391(b)(1), (c).

4 Accordingly, the decision to transfer depends upon the convenience of the parties and  
5 witnesses and the interests of justice. In exercising its discretion, the court must consider public  
6 factors, which pertain to the interests of justice, and private factors, which concern the  
7 convenience of the parties and witnesses. Decker Coal Co. v. Commonwealth Edison Co., 805  
8 F.2d 834, 843 (9th Cir. 1986). Among the factors to be considered are: (1) the plaintiff's  
9 choice of forum; (2) convenience of the parties and witnesses; (3) ease of access to evidence;  
10 (4) familiarity of each forum with the applicable law; (5) the feasibility of consolidation with  
11 other claims; (6) local interest in the controversy; and (7) relative court congestion in each  
12 forum. Id.; Jones, 211 F.3d at 498-99; Lopez v. Chertoff, No. C06-05000, 2007 WL 2113494  
13 (N.D. Cal., July 20, 2007) (White, J.).

14 1. Plaintiff's Choice of Forum

15 Plaintiff argues that her decision to file suit here must be given great deference.  
16 Although plaintiff's choice of forum generally is accorded substantial weight, it "is not the final  
17 word." Pacific Car and Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir. 1968). In deciding  
18 the weight to be given to plaintiff's choice, "consideration must be given to the extent both of  
19 the defendant's business contacts within the chosen forum and of the plaintiff's contacts,  
20 including those relating to [her] cause of action." Id. Additionally, "[t]he weight given to the  
21 plaintiff's choice of forum diminishes when the plaintiff resides outside the chosen forum."  
22 Lopez, 2007 WL 2113494 at \*2 (citing Gemini Capital Group, Inc. v. Yap Fishing Corp., 150  
23 F.3d 1088, 1091 (9th Cir. 1998)). And, "when an individual brings a derivative suit or  
24 represents a class, the named plaintiff's choice of forum is given less weight." Lou v. Belzberg,  
25 834 F.2d 730, 739 (9th Cir. 1987); see also Metz v. United States Life Ins. Co., 674 F. Supp.2d  
26 1141, 1146 (C.D. Cal. 2009) ("Similarly, the Ninth Circuit 'like other courts, has noted that the  
27 weight to be given the plaintiffs choice of forum is discounted where the action is a class  
28 action.'") (quoting Saleh v. Titan Corp., 361 F. Supp.2d 1152, 1157 (S.D. Cal. 2005)). Here,

1 plaintiff is an Illinois resident, with no ties to California, pursuing putative class claims against  
2 a company headquartered in the Central District of California. Her choice of forum is entitled  
3 to very little weight.

4 2. Convenience of the Parties and Witnesses

5 The record presented indicates that all of defendant's documents, datacenters, and  
6 employees are in the Central District of California. (Tang Decl. ¶¶ 3-6, 8). Inasmuch as  
7 plaintiff chose to file suit in California, notwithstanding that she lives in Illinois, litigating in the  
8 Central District of California would be no less convenient to her than litigating here. Plaintiff  
9 posits that potential witnesses might be located here and that many potential class members are  
10 also located here. But Spokeo has shown that actual witnesses are in the Central District of  
11 California. And, plaintiff's presumption that potential class members reside in this district also  
12 holds true for residents in the Central District of California. This factor weighs in favor of  
13 transfer.

14 3. Ease of Access to Evidence

15 Spokeo says that its electronic and hard copy documents are physically located in the  
16 Central District of California. Plaintiff contends that, given the technology available today,  
17 evidence would be easily available in either district. Some courts have concluded that the  
18 location of documentary evidence is entitled to little weight given the technology available  
19 today. See, e.g., Boateng v. Gen. Dynamics Corp., 460 F. Supp.2d 270, 276 (D. Mass 2006)  
20 (citing 15 CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FED. PRACTICE  
21 AND PROCEDURE, § 3853) (concluding that the physical location of documents is entitled to  
22 little weight where available technology eases the accessibility and reproducibility of  
23 information). This court finds that this factor favors transfer, but only slightly.

24 4. Familiarity of Each Forum with the Governing Law

25 The parties agree that both courts are equally familiar with the applicable law. This  
26 factor does not weigh in either side's favor.

1           5.       Feasibility of Consolidation with Other Claims

2           Spokeo argues that Purcell's allegations are virtually identical to another putative class  
3 action—Robins v. Spokeo, Inc., Case No. 2:10-cv-5306-ODW-AGR—filed in the Central  
4 District of California several months before the instant lawsuit was filed. Plaintiff argues that  
5 her claims and those in Robins concern different questions of law and fact. But, it appears to  
6 this court that the gravamen of both suits are the same. And, while Purcell asserts a claim under  
7 Illinois state law and Robins involves California state law, both suits apparently are premised  
8 upon alleged violations of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681.  
9 Moreover, this court has not substantively analyzed Purcell's claims in any depth. This factor  
10 weighs in favor of transfer.

11           6.       Local Interest in the Controversy

12           Spokeo contends that the Central District of California has a greater interest in this  
13 action because the company's principal place of business is in Pasadena, California. Plaintiff  
14 argues that Spokeo's alleged misconduct might nonetheless have affected many Northern  
15 California residents. Plaintiff's supposition could be applied equally to residents of the Central  
16 District. This factor tips in defendant's favor.

17           7.       Relative Court Congestion in Each Forum

18           Defendant contends that this district is more congested than the Central District of  
19 California. If the published statistics cited by defendant are credited, Spokeo's contention  
20 would appear to be true. And, plaintiff's simple numeric tallies are insufficient to rebut  
21 defendant's showing. This factor weighs in favor of transfer.

## 22                               ORDER

23           Having determined that plaintiff's choice of forum is entitled to little deference here,  
24 and that all other factors, on balance, either favor transfer or are neutral, this court in the  
25 exercise of its discretion finds that a transfer to the Central District of California is warranted.  
26 Accordingly, defendant's motion to dismiss is denied, and its alternate motion to transfer venue  
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1 is granted.<sup>2</sup> The Clerk of the Court shall transfer this case to the United States District Court  
2 for the Central District of California.

3 SO ORDERED.

4 Dated: July 1, 2011

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6 HOWARD R. LEOFF  
7 UNITED STATES MAGISTRATE JUDGE  
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28 <sup>2</sup> Defendant's alternate motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1)  
and 12(b)(6) (Docket No. 17) is terminated.

1 5:10-cv-03978-HRL Notice has been electronically mailed to:

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